The petitioner admitted that during the marriage he had been guilty of adultery. He filed a statement disclosing particulars of the adultery. I considered this statement and in the light of all the facts of this case, decided to exercise my discretion in favour of the petitioner and granted him a divorce notwithstanding his adultery.

Counsel for the respondent endeavoured to resist the petition on a number of grounds:

(i) that a divorce would result in financial and other hardship to the respondent;

(ii) a divorce would cause serious repercussions to the respondent's social status in the Indian community;

(iii) a divorce was an anathema to the respondent on religious and moral grounds;

(iv) that the seven years' separation was planned and imposed upon the respondent by the petitioner;

(v) that the general conduct of the petitioner towards the respondent did not warrant the granting of a divorce to the petitioner; and

(vi) that if a divorce was granted the respondent would not be entitled to a share in the estate of the petitioner upon his death.

In my opinion counsel for the respondent had completely misapprehended the law applicable. All these matters were irrelevant having regard to the ground on which the petition was based.

I agree with my brother Winslow J. in *Moses* v. *Moses*,[1] that "no question of fault on the part of the petitioner enters into the picture at all" when the petition is based on the ground of "seven years' separation" and that the amendments contained in section 82(1)(e) and section 82(2)(g) of the Women's Charter "are designed to put an end to marriages where the parties have been separated for at least seven years and are unlikely to be reconciled. In short, the amendments appear to have been made on the basis that, where the marriage bond has become no more than a detested shackle after the parties have been separated for not less than seven years, it is in the public interest that the tie should be severed.". I would add that it is sufficient if the marriage is a detested shackle in the eyes of either party and that it is not necessary that it should be so in the eyes of both parties to the marriage. When a petition is presented on the ground of seven years' separation, the fact that the respondent wishes to continue with the marriage can never be a valid ground for disallowing the petition. In such cases our Parliament has in clear and unmistakable language given the court powers to dissolve the marriage when the petitioner has satisfied the court on the two relevant matters and it is unnecessary to look at the law in New Zealand or elsewhere for guidance. In my judgment the provisions of section 82(1)(e) and 82(2)(g) of the Women's Charter were correctly construed by Winslow J. in *Moses* v. *Moses, supra,* which decision is almost ten years old now and has been applied in hundreds of cases resulting in the dissolution of hundreds of marriages in Singapore. It is too late now to construe these provisions in any other manner.

The respondent prayed for a judicial separation. Here, it is necessary to bear in mind the history of this marriage. In Divorce No. 35 of 1970 the petitioner had sought a divorce from the respondent on the ground of cruelty. That petition was heard by me and in that case I heard all the allegations and counter-allegations of the parties to the marriage right from the start of the marriage. That petition was dismissed by me after a very lengthy hearing and the petitioner's appeal against my judgment was dismissed by the Court of Appeal in Civil Appeal No. 8 of 1971. I am therefore very familiar with the whole history of this marriage. I am aware of what each party has done to the other or is endeavouring to do to the other party. Even in these proceedings there were allegations and counter-allegations. For example, the respondent alleged that the petitioner had frequently committed adultery with one Miss Soh Jin Choo a member of his office staff. The petitioner, on the other hand, alleged that the respondent had in October 1976 committed adultery with a man whose identity was not known to him. In view of the ground on which the petition was based I did not consider it necessary to go into these allegations. The parties were clearly at logger-heads. There was no love or affection left between them. The petitioner had during the last ten years tried every means of getting rid of the respondent. And the respondent had tried every means of harrassing the petitioner and members of his office staff. Under these circumstances, I was of the opinion that no useful purpose would be served by granting a decree of judicial separation. Furthermore, the petitioner having proved his case under section 82(1)(e) of the Women's Charter, he had a statutory right to have his marriage dissolved.

It was for these reasons that I rejected the respondent's plea for a judicial separation and granted the petitioner's prayer for the dissolution of his marriage.

*Petition granted.*

Solicitors: *J.B. Jeyaretnam & Co.; Director of Legal Aid.*

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## NG WEE WHYE v. WONG SOOK HENG

**[O.C.J. (Rajah J.) November 17, 1977]**
**[Singapore — Divorce No. 255 of 1977]**

*Family Law — Marriage — Refusal to consummate — Parties living apart — Husband in Singapore while wife in Penang — Petition for marriage to be declared null and void — Jurisdiction — Women's Charter (Cap. 47), s. 80.*

This was a petition by the husband that his marriage to his wife be declared null and void. The petitioner was married under the provisions of the Women's Charter in Singapore on July 14, 1975 to the respondent, a Malaysian citizen, who prior to her marriage had been residing in Penang. After the said marriage the respondent stayed with the petitioner and his family for a period of two weeks, after which she left Singapore to return to Penang — since then the petitioner and the respondent had been living apart from each other, he in Singapore and she in Penang. It was alleged that the respondent had wilfully refused to consummate the marriage. There was evidence at or about the time of the said marriage the parties had agreed that they should not cohabit until they had gone through a Chinese customary marriage to be held a year after the said marriage.

**Held:** under section 80(2) of the Women's Charter for the court to have jurisdiction even where the marriage has been registered under the provisions of the Act it was necessary for both parties of the marriage to reside in Singapore at the time of the commencement of the proceedings. In this case the court had no option but to dismiss the petition for want of jurisdiction.

DIVORCE PETITION.

*Thomas Toh Swee Hwee* for the petitioner.

Respondent not represented.

**Rajah J.:** This was a petition by one Ng Wee Whye, petitioning the court that his marriage to his wife, Wong Sook Heng, may be declared null and void.

The petitioner was married under the provisions of the Women's Charter (hereinafter referred to as "the Act") in Singapore on July 14, 1975 to the respondent, a Malaysian citizen, who prior to her marriage had been residing in Penang. After the said marriage the respondent stayed with the petitioner and his family for a period of two weeks, after which she left Singapore to return to Penang — since then the petitioner and the respondent had been living apart from each other, he in Singapore and she in Penang.

It was stated in the petition that the respondent had wilfully refused to consummate the marriage, particulars of which were set out therein and are as follows:

"(1) At or about the time of the said marriage, Your Petitioner and the Respondent agreed that they should not cohabit until they had gone through a Chinese customary ceremony to be held a year after the said marriage;

(2) From August 1976 to February, 1977, the Respondent wrote from Penang several letters to Your Petitioner wherein the Respondent initially mentioned the problems of cohabiting as husband and wife in Singapore and later asked Your Petitioner to get the said marriage dissolved as soon as possible. The problems mentioned by the Respondent were her reluctance to leave her parents and to give up her job in Penang as well as the difficulties of getting a job in Singapore and of communicating, the Respondent being a Cantonese and Your Petitioner being a Teochew;

(3) By the said letters and by failing to go through a Chinese customary ceremony, the Respondent has evinced an intention not to consummate the said marriage."

On the facts of the case I would have granted the petitioner his prayer that his marriage be declared null and void had I not been of the view that under section 80(2) of the Act the court had no jurisdiction to entertain the petition.

Section 80 of the Act reads:

"80—(1) Nothing herein shall authorize the court to make any decree of divorce except—

(a) where the marriage has been registered or deemed to be registered under the provisions of this Act; or

(b) where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and

(c) where the domicile of the parties to the marriage at the time when the petition is presented is in Singapore.

(2) Nothing herein shall authorize the court to make any decree of nullity of marriage except—

(a) where the marriage has been registered or deemed to be registered under the provisions of this Act; or

(b) where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and

(c) where both the parties to the marriage reside in Singapore at the time of the commencement of the proceedings.

(3) Nothing herein shall authorize the court to make any decree of judicial separation or of restitution of conjugal rights except—

(a) where the marriage has been registered or deemed to be registered under the provisions of this Act; or

(b) where the marriage between the parties was contracted under a law providing that, or in contemplation of which, marriage is monogamous; and

(c) where both the parties to the marriage reside in Singapore at the time of the commencement of proceedings."

According to the petition, the wife was not residing in Singapore at the time of the commencement of the proceedings i.e. date of the petition.

I read section 80(2) of the Act, as punctuated therein, to mean that for the court to have jurisdiction even where the marriage has been registered under the provisions of the Act (section 80(2)(a)) it is necessary for both parties to the marriage to reside in Singapore at the time of the commencement of the proceedings (section 80(2)(c)). In other words I construe the section to mean that whether under section 80(2)(a) of the Act the marriage has been registered or deemed to be registered under the Act, or whether under section 80(2)(b) of the Act the marriage was contracted under a law providing that, or in contemplation of which marriage is monogamous, section 80(2)(c) of the Act applies in either case. Any other reading would render the provisions of sections 80(1) to mean that persons marrying under the Act in Singapore need not have a domicile in Singapore at the time when the petition is presented.

For the above reasons I had no option but to dismiss the petition for want of jurisdiction.

*Petition dismissed.*

Solicitors: *Ng Liang Poh & Co.*